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5
6 IN ARBITRATION PROCEEDINGS PURSUANT TO TITLE 10212 OF THE
7 CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES
8

9
10 In the Matter of a Controversy
11 between
12 INTERNATIONAL BROTHERHOOD OF
13 ELECTRICAL WORKERS, AFL-CIO, LOCAL
14 UNION 1245,

15 and
16 PACIFIC GAS AND ELECTRIC COMPANY,

17 Involving the suspensions of
18 grievants S and B and
19 the discharge of grievant M

OPINION AND AWARD
OF THE
BOARD OF ARBITRATION

20
21 This Arbitration arises pursuant to Agreement between the
22 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL
23 UNION 1245, hereinafter referred to as the "Union", and PACIFIC
24 GAS AND ELECTRIC COMPANY, hereinafter referred to as the "Company",
25 under which ADOLPH M. KOVEN was selected to serve as Chairman of a
26 Board of Arbitration which was also composed of LAWRENCE N. FOSS,
27 Union Board Member; ALBERT E. SANDOVAL, Union Board Member; DAVID
28 BERGMAN, Company Board Member; and ARTHUR M. KEZER, Company Board
29 Member; and under which the Award of the Board of Arbitration
30 would be final and binding upon the parties.

31 Hearing was held on November 19, 1973 in San Francisco,
32 California. Both parties were afforded full opportunity for the

1 examination and cross-examination of witnesses, the introduction of
2 relevant exhibits, and for argument. Both parties filed post-hearing
3 briefs.

4 APPEARANCES:

5 On behalf of the Union:

6 Ronald E. Yank, Esq.
7 Brundage, Neyhart, Gordin & Beeson
8 100 Bush Street, Suite 2600
9 San Francisco, California 94104

10 On behalf of the Company:

11 L. V. Brown, Esq.
12 Pacific Gas and Electric Company
13 245 Market Street
14 San Francisco, California 94105

15 ISSUE

16 Did the suspensions without
17 pay of grievants S and
18 B violate the provisions
19 of the applicable Labor
20 Agreements? If so, what
21 should be the remedy?

22 Did the discharge of grievant
23 M violate the applic-
24 able Labor Agreement? If so,
25 what should be the remedy?

26 RELEVANT SECTION OF THE CONTRACT

27 Sec. 7.1

28 The management of the Company and its busi-
29 ness and the direction of its working forces
30 are vested exclusively in the Company, and
31 this includes . . . the following . . . to
32 suspend . . . or discharge for just cause.

33 INTRODUCTION:

34 Three separate grievances are involved in this case and each
35 of them deals with a fact of criminal arrest for conduct away from
36 the Company premises and not on Company time. Two of the griev-
37 ants were suspended without pay and the third was discharged.

38 In reference to prior cases on this subject, four prior
39 situations were put in evidence:

40 (1) A meter reader was arrested for robbery and assault
41 with a deadly weapon, and the Company discussed the arrest with

1 him and investigated his prior record. After determining that the
2 charges would probably be dropped, he was not suspended; (2) A
3 meter reader was arrested for possession and sale of heroin. He
4 was suspended while the Company conducted a thorough investigation,
5 and after it decided that he was an average employee, he was rein-
6 stated pending determination of the criminal charges. He was re-
7 moved from meter reading to a job where he could be supervised;
8 (3) An employee who was arrested for possession and cultivation of
9 marijuana was not suspended because he did not have public contact.
10 Moreover, after discussing the charges with him shortly after his
11 arrest, the Company was convinced that he was innocent of the
12 charges. Although he ultimately pleaded guilty to a reduced
13 charge, he continued to work on a Company work furlough program;
14 and (4) An employee who was convicted of a crime involving violence
15 was not suspended but continued to work while serving weekends in
16 jail. The Company testified that he was a long-term employee with
17 a good work record, and that he was working under supervision.

18 S

19 Facts:

20 S was suspended on July 8, 1970 after being arrested
21 on July 6 for possession of a deadly weapon, and several charges
22 based on cultivating and processing marijuana. S worked a
23 little more than a year as a mechanic. He lubricated and did
24 minor repairs on Company vehicles on the noon to 9:00 P.M. shift at
25 the Concord facility. He was not reinstated until May 27, 1971
26 after the court proceedings were terminated.

27 An article in the local newspaper, though it did not mention
28 the Company, brought his arrest to the attention of his supervisor.
29 Although the grievant was a good worker, the reason given for his
30 suspension was that he worked without supervision at night with
31 only one other employee who was in a lower classification, and
32 that the Company was concerned with the safe repair of its auto-

1 mobiles and his influence upon the other employees.

2 On April 27, 1971 he pleaded guilty to one count of poses-
3 sion of marijuana, a misdemeanor, and was put on probation. During
4 the period of his long suspension, he made several contacts with
5 the Company requesting reinstatement.

6 Position of Parties re: S :

7 (a) Company:

8 Although S was a good employee, suspension was called
9 for. The decision to suspend S was thoughtfully weighed a-
10 gainst the circumstances under which S worked in connection
11 with the Company's obligation to provide for the safety and welfare
12 of other employees as well as the public. Moreover, even if
13 S is entitled to back pay, such pay should be awarded only
14 for the period of suspension during which he was not responsible
15 for the delay in court proceedings. S or his attorney was
16 responsible for some of the delay, and no Award should be made for
17 that period of time. Case No. 804 is consistent with this result.

18 (b) Union:

19 The Company admits that S was a good worker, had no
20 public contact, and no unfavorable publicity from his arrest re-
21 sulted since the Company's name was not mentioned in the newspaper
22 article. Nonetheless he was suspended. The reasons given by the
23 Company are insufficient. No independent Company investigation
24 was made of the facts behind his arrest, and the Company merely
25 monitored the court proceedings. The Company could have easily
26 placed S back on his prior Oakland garage job if it was con-
27 cerned about the matter of close supervision.

28 Review Committee Case No. 804 is not helpful to the Company
29 because the opinion itself states that the dispute was settled
30 "without prejudice to the position of either Union or Company",
31 and thus was not "intended to have. . . precedential value."

32 Furthermore, neither S nor his attorney deliberately caused

1 the delay. Although several continuances were granted, these con-
2 tinuances are a normal part of criminal procedure, and it would be
3 manifestly unfair to require S. to bear the cost of those de-
4 lays. Finally, S. was sentenced on April 27, 1971, and not
5 reinstated until a month later with no explanation given for the
6 delay in his reinstatement. The Company discriminated against
7 S. because he was not given the same treatment as other em-
8 ployees were given as discussed in the foregoing.

9 B.

10 Facts:

11 According to the review committee on January 15, 1973,
12 B. was arrested for possession and sale of marijuana and pos-
13 session of cocaine. A newspaper article identified him as a "meter
14 reader". He was suspended on January 17, 1973, after the Company
15 reviewed his prior work history. On February 2, 1973, the grievant
16 pleaded guilty to two misdemeanor charges (possession of marijuana
17 and being in a room where marijuana was used), and put on proba-
18 tion. He was reinstated on February 6, 1973.

19 In reviewing his history, the Company found that from the
20 time of his employment in 1964 his record showed previous charges
21 of unsatisfactory performance, excessive absenteeism, and negative
22 attitudes.

23 Positions of the Parties re: B.:

24 (a) Company:

25 B. was identified in a newspaper article as a "meter
26 reader" and this reference clearly identified the Company. As this
27 Arbitrator himself recognized in a prior decision (48 LA 264, 266),
28 the Company must exercise great caution in retaining employees who
29 are charged with a crime if such employees, like B., have con-
30 tact with the public.

31 B. worked unsupervised, away from the Company's
32 premises. Even though he was not intended to enter customer homes

1 as frequently as service personnel, nevertheless the public would
2 acquire an unfavorable attitude regarding the character of Company
3 employees if he had not been suspended pending determination of the
4 criminal charges. Furthermore, it was alleged that B was in
5 possession of a hard narcotic. This factor combined with his un-
6 satisfactory work record justified the conclusion that he was un-
7 trustworthy. Indeed, the Company was lenient because B's
8 supervisor recommended immediate discharge rather than suspension.

9 (b) Union:

10 Not only did no customer complain when B was arrested,
11 but the newspaper article itself did not connect B with the
12 Company. Although his job involved a contact with the public, the
13 Company was not worried that B might sell narcotics on his
14 route. It was only concerned with his trustworthiness.

15 The Company should have treated B like the prior meter
16 readers who had been arrested. He was not contacted by the Com-
17 pany nor did it consider assigning him to a supervised job. Since
18 the Company did not establish just cause for disciplining B,
19 he is entitled to back pay for the period of his suspension.

20 COMPANY POLICY

21 Positions of Parties re: Company Policy:

22 (a) Company:

23 Under its policy the Company conducts an investigation dur-
24 ing the time that the employee is suspended and while judicial
25 proceedings are pending. The Company's written policy states that
26 "employees who are arrested and held for crimes of violence or
27 which involve moral turpitude should be suspended at least until a
28 thorough investigation has been made by the Company, and, in some
29 cases, until the decision has been made by the court." If a man
30 had been an unsatisfactory employee or committed misconduct on the
31 job, the Company would not directly contact him after his arrest
32 to investigate the charges.

1 The Company has a flexible policy in respect to suspending
2 an employee who is arrested, and takes into consideration such
3 factors as the nature of the charge; the employee's length of
4 service and the quality of his prior performance; whether the em-
5 ployee had contact with the public; availability of reassignment
6 to a different work area; and the degree of supervision under which
7 the employee worked. Crimes of violence or those crimes of a "ser-
8 rious moral nature" generally call for suspension. Thus, even
9 though the arrests may be for the same crime, one employee might
10 be suspended while the other employee would not be suspended.
11 According to Company policy, individuals who have previously been
12 convicted of a crime are employable depending on the person's par-
13 ticular background and the likelihood that he was been rehabili-
14 tated.

15 Two principles emerge from prior arbitrations involving the
16 suspension of employees.^{1/} First, the Company is entitled to sus-
17 pend an employee pending determination of criminal charges; and
18 second, upon finding of "just cause" to support the suspension,
19 the loss of pay during the suspension period is a proper penalty.

20 (b) Union:

21 The Company informed the Union that it was the Company's
22 policy not to suspend an employee unless the crime for which he
23 was arrested involved violence or moral turpitude.

24
25 ^{1/} In Arbitration No. 38 involving an employee who was suspended
26 after having been charged with a crime, the arbitrator
27 recognized that the usual procedure agreed on by the parties is
28 to suspend an employee pending the outcome of the case and not to
29 challenge the suspension until ultimate disposition of the
30 criminal charges. In that case, because criminal charges were
31 dropped, the employee was given back pay for the period of his
32 suspension. In Arbitration No. 24, suspension was also recognized
as proper and the arbitrator held that "Since the grievant's
misconduct gave rise to the necessity of an investigation,
the Company should not be required to compensate him during
that period." Other cases have held that suspension is justified
pending the determination of criminal charges. (National Steel
Corp., 60 LA 613, 618; Brown and Williamson Tobacco Co.,
60 LA 502)

1 Although the Company claims that in imposing a suspension it
2 it takes into account various factors, such as an employee's work
3 record and the nature of his job, its treatment of these grievants
4 was contrary to its own stated policy in that it did not investi-
5 gate the charges against B. and S any further than to
6 monitor the court proceedings. In three prior cases, the Company
7 spoke with the arrested employees, and they were not suspended
8 while the criminal charges were being decided even though in two
9 of these prior cases the employees had contact with the public.^{2/}
10 One of these employees was put into a job where he was supervised.
11 In another case, the convicted employee served jail time without
12 being suspended, continuing with the Company on a work-furlough
13 program.

14 What employees do or do not do outside working hours and off
15 Company premises is not a proper concern of the Company so long as
16 no adverse effect has taken place in the employment relationship
17 or to the Company's reputation.

18 Although Arbitration No. 38 involved a situation where all
19 charges were dropped against the arrested employee, and in this
20 dispute the grievants each pleaded guilty to a misdemeanor, the
21 distinction is not controlling and the Company is obligated to pay
22 B. and S during the period when they were suspended be-
23 cause the Company did not establish just cause for its discipline.

24 That the Company should run this risk is appropriate since
25 it will prevent helter-skelter suspension based on arrests that
26 have no harmful impact on the Company. Since the arrests should
27 not have caused any suspension in the first instance, full back
28 pay should be awarded to S and B. .

31 ^{2/} Two of the employees who were meter readers like Baxter pleaded
32 guilty to reduced charges.

1 M

2 Facts:

3 M was discharged as a result of his conviction for
4 an offense committed off the job. He was an Equipment Operator
5 with over ten years service at the time of his arrest on February
6 4, 1973. He was charged with one count of grand theft and two
7 counts of auto burglary. A newspaper report of his arrest came to
8 the attention of a supervisor. Because he was in court on
9 February 5, he did not work and was asked by his supervisor why he
10 had not worked. The grievant stated that he was sick. When the
11 supervisor called his attention to the newspaper article, the
12 grievant said, "Oh, well, that would make anyone sick." On May 10,
13 after pleading guilty to a lesser charge of auto burglary, a mis-
14 demeanor, he was placed on probation.

15 The Company's investigation consisted of contacting local
16 police and following up the court proceedings. Because it found
17 "no mitigating circumstances surrounding the burglary", he was
18 discharged on June 12, 1973. Prior to his discharge, there were
19 no complaints to higher management about his performance. After
20 the discharge, however, a foreman testified before the Union-Com-
21 pany committee investigating the grievance, that the grievant could
22 not be relied upon to keep busy and had to be watched. Moreover,
23 at the arbitration hearing an additional complaint was made by two
24 crew foremen to the effect that they had requested that the griev-
25 ant be removed from their crews because he was uncooperative and
26 was creating a "bad situation". In addition, for the first time
27 at the arbitration hearing, a foreman testified that some weeks
28 before the discharge the grievant stole lumber from a job site.
29 When ordered to return the lumber, the grievant said that if he
30 wanted the lumber, he would "throw it in the weeds and come back
31 and get it at night." The grievant also stated some two or three
32 months after his arrest that the "only thing wrong with (the crime)

1 . . . was the fact that (he) got caught."

2 Because of personal and financial problems, the grievant
3 was under considerable strain in the period both before and after
4 his arrest and prior to his discharge.

5 Position of Parties re: M :

6 Company:

7 Despite the Company's employment policy of hiring persons
8 convicted of crime, the Company need not retain an employee such
9 as M who committed a serious offense directly related to
10 Company business. Although M is not a public contact em-
11 ployee, he works on the property of Company customers. The fact
12 that he stole lumber from a customer's property establishes him as
13 a dishonest employee and not entitled to be retained in the Com-
14 pany's service.

15 Even before the arrest, M was an unsatisfactory em-
16 ployee. His last two supervisors did not want him on their crews.
17 M lied about his absence at work the day that he was
18 arraigned. Moreover, M did not hold honesty in serious re-
19 gard since he himself stated that he would continue to steal after
20 he was caught stealing lumber on the job, and even after his crim-
21 inal conviction, he essentially said that there was nothing wrong
22 with stealing, but only with getting caught. It is incontrovert-
23 ible that M is not a good prospect for rehabilitation.

24 That the lumber stealing incident did not come to light un-
25 til after his discharge is irrelevant since his supervisor, with-
26 out disclosing that he knew about the incident, took the lumber
27 stealing into account when he recommended discharge. As a result,
28 that incident played a part in the reason for his discharge. That
29 the incident was not reported until the arbitration hearing is
30 understandable since the foreman himself was a member of the bar-
31 gaining unit and hesitant to cause M to lose his job. An
32 arbitration is a trial de novo and the facts which were estab-

1 lished at the arbitration hearing are the determinative facts.

2 (b) Union:

3 With one exception, all the evidence before the joint in-
4 vestigating committee established M as a satisfactory em-
5 ployee. That one exception involved a supervisor who told the
6 committee that the grievant could not be relied upon, and therefore
7 had to be watched. Not until the arbitration hearing was the
8 really damaging evidence against M produced: (a) One
9 supervisor stated that the grievant and another employee created
10 "a bad situation" on the crew, but it was admitted that the other
11 employee had a "very bad influence" on the grievant; (b) A second
12 supervisor's statement that the grievant was uncooperative should
13 be disregarded because he did not make the statement before the
14 investigating committee; (c) The incident regarding the stealing of
15 lumber was not reported until the arbitration hearing. Moreover,
16 the grievant was not previously reprimanded for poor work or for
17 anything else. The matters which came to light after the dis-
18 charge did not play a part in his discharge and should be disre-
19 garded.

20 That conclusion follows the established rule in other
21 arbitrations.^{3/} The same reasoning in respect to post-discharge
22 conduct applies to M ' statement made after the discharge,
23 i.e., that "the biggest mistake that he made was getting caught."
24 Moreover, M made this statement at a time when he was under
25 considerable stress because his ex-wife had committed suicide and
26 he had just taken custody of his two young sons. At the hearing,
27 M stated that he regretted his actions, and that he did not
28 intend again to engage in improper conduct. In summary, M '

29
30 ^{3/}Arbitration No. 43 is consistent with the general rule that
31 post-discharge conduct is outside the scope of whether just cause
32 for discharge exists (See Rotor Tool Co., 49 LA 210, 213;
Riverside Book Bindery, Inc., Elkouri and Elkouri, How Arbitration
Works, 3rd ed. (BNA, 1973), 634-5.).

1 conduct occurred outside working hours; he was considered a good
2 worker; and the Company suffered no adverse publicity. For these
3 reasons M should be reinstated with back pay.

4 CONCLUSION:

5 It is well established in arbitration that conduct away from
6 the plant outside of working hours justifies discipline whenever
7 the grievant's behavior has harmed the Company's reputation or
8 product or where such conduct renders the employee unable to
9 perform his duties or leads to a reluctance on the part of other
10 employees to work with the grievant. It is also established that
11 such factors as the nature of the grievant's job and the crime with
12 which he is charged becomes relevant.

13 S

14 Of the three grievants, S case is clearly the
15 strongest. All that the Company essentially argues in his situa-
16 tion is that his suspension was justified because he worked with-
17 out supervision, because it was apprehensive about the safety of
18 the cars that he repaired, and because of his possible influence
19 on the other employee with whom he worked.

20 That Company case is not sufficient to overcome the case in
21 S favor. S was admittedly a good employee, he had no
22 public contact, and the Company's reputation was in no way affected
23 by his arrest. Moreover, the Company did not treat S in the
24 same way as it previously treated other employees arrested for
25 similar offenses. It did not discuss the arrest with him or give
26 him the opportunity to convince the Company that some alternative
27 other than suspension was warranted. Furthermore, the Company did
28 not consider reassignment alternatives in which he would be placed
29 under close supervision, a method it had previously applied to
30 another employee in preference to suspension. Finally, only the
31 most cursory investigation was conducted prior to his suspension,
32 contrary to its prior practice of making a more searching

1 investigation.

2 For these reasons, the suspension was improper and S
3 is entitled to back pay. The only question which remains is for
4 what period is back pay due. The Company urges a reduced amount
5 because it claims that the grievant and/or his attorney were re-
6 sponsible for some of the delay in the court proceedings.

7 The Company's view in this respect is not persuasive. First,
8 the Company should have treated the grievant in the same fashion
9 that it treated the prior offenders, and if it had given S
10 the consideration to which he was entitled by virtue of his prior
11 good performance, no suspension should have resulted. By failing
12 to do so, the grievant became entitled to be paid as though no sus-
13 pension had occurred; and second, on the basis of the record, both
14 in regard to Company evidence and to Review Committee Case No. 804
15 (which involved a settlement between the parties in reference to a
16 particular set of facts and was "without prejudice" to the posi-
17 tion of the parties), we cannot reach the conclusion that the
18 grievant is to be held responsible for the delay in the criminal
19 proceedings. There is no evidence that he unconsciously and im-
20 properly delayed the proceedings, and to the contrary, the con-
21 tinuances which he sought and which were granted were in further-
22 ance of his defense, a right to which he was entitled and which the
23 court recognized. In order to reach the conclusion that the Com-
24 pany favors, more culpable conduct in this connection would be re-
25 quired.

26 B.

27 B's situation is not as clear-cut as S'. He did
28 not present as solid a work history as S, in that he had
29 numerous previous warnings in respect to performance on the job,
30 absenteeism, and "negative attitude". The charges against him at
31 the outset were more serious in that not only marijuana but
32 cocaine was involved, even though he was later found guilty only

1 of a lesser charge. Unlike S he was in direct contact with
2 the public, and unlike S (who was a good employee), in
3 B's case the Company took into consideration his poor employ-
4 ment record when it decided to suspend him.

5 But in some important respects, the basic factors which are
6 favorable to S also apply to B. No direct reference
7 was made in the newspapers connecting B with the Company, nor
8 did his arrest have any unfavorable effect upon the Company's pro-
9 duct or upon other employees. Moreover, the Company did not inter-
10 view B prior to his suspension to get his side of the story,
11 nor did it consider placing him in a supervised job and in a job
12 situation where he could have no public contact. In short, like
13 S, he did not get the same treatment that had been afforded
14 other employees in the past.

15 The Company says that despite these considerations it was
16 justified in suspending B when it took his past record into
17 account. While the Company is not precluded from considering an
18 employee's past record, that record must have some direct and
19 relevant relationship to the arrest in order to justify suspension.
20 For example, the mere fact that an employee may have a poor ab-
21 sence record does not justify his suspension if he is arrested for
22 bookmaking. If he had previously been disciplined on the job for
23 gambling and later for bookmaking, the Company would be justified
24 in taking into account his record on the job in applying for the
25 arrest off the job.

26 Thus, for all the reasons set forth in the foregoing,
27 B's suspension was unjustified and he is entitled to back pay
28 for the period of suspension.

29 M

30 Two possible approaches are available in the M situ-
31 ation. One way is to consider the Company's reasons for M
32 discharge at the time that it discharged him up to and including

1 the Review Committee hearing. The other way is to consider the
2 Company's justification for his discharge as of the time of the
3 arbitration hearing.

4 The case against M for discharge at the time of his
5 discharge was based almost entirely upon his conviction for auto
6 burglary. Except for one supervisor's mild criticism of the
7 grievant and the grievant's cavalier attitude towards his con-
8 viction, the grievant's past record was not put in issue, and did
9 not contribute to the reasons for his discharge. In other words,
10 at this point, the Company considered the criminal conviction
11 essentially sufficient in itself to justify his termination.

12 But that Company approach does not meet the criteria for
13 discharge for misconduct away from the plant. No showing was made
14 that his crime had any relationship to the Company's reputation or
15 product, or that it would prevent him from carrying out his duties
16 on the job, or that it made him unacceptable to fellow employees.
17 Nor is the penalty of discharge, given these particular facts, in
18 harmony with the customary arbitral approach to this subject.^{4/}

19 Moreover, M had worked for the Company for over ten years,
20 and so far as the Company knew at the time of discharge, he was a
21 satisfactory employee.

22 The picture changes radically when we approach the M
23

24 ^{4/} Discharge or suspension not sustained in Akers Motor Line, Inc.
25 41 LA 987 (driving under influence of alcohol); Babcock and
26 Wilcox Co., 43 LA 242 (contributing to the delinquency of a minor);
27 Menzie Dairy Co., 45 LA 283 (charges of pandering and obscene
28 exhibition); Sherwin Williams Co., 22 LA 1 (rape); Republic Steel
29 Corp., 23 LA 808 (burglary); International Harvester Co., 24 LA
30 279 (criminal sexual psychopath); Sertain-Teed Products Corp., 24
31 LA 606 (aggravated assault); Niagara Frontier Transit System, Inc.,
32 26 LA 575 (sexual offenses), Sherwin Williams Co., 22 LA 1 sets
forth the customary grounds: (1) a claim must exist that other
employees have refused to work with the grievant because of alleged
offense; (2) the Company's name was mentioned either in newspaper
article or court records of a case; and (3) it is a fundamental
principle of law that a person is presumed innocent until proved
guilty. Should employee be found guilty and sentenced to prison,
employer would then have the right to discharge him, not for his
guilt, but for his absence from work.

1 situation as of the time of the arbitration hearing. Several im-
2 portant factors in his disfavor are added, namely, two supervisors
3 who were uncomplimentary about the grievant's job performance, and
4 in fact, by virtue of his attitude and behavior he was regarded as
5 a highly undesirable crew member. Most important, however, is what
6 amounts to a stipulated fact that the grievant stole lumber from a
7 Company customer on Company time, and indeed this act took place
8 after his arrest and before his conviction. In addition, his
9 declarations and attitude toward this misconduct or continued mis-
10 conduct of this sort were uncompromising. In view of the undisputed
11 showing of misconduct which directly relates to the Company's
12 business, there is no doubt that if all the evidence introduced at
13 the arbitration hearing was to be taken into consideration, his
14 discharge would be amply justified.

15 The Union is correct in its position that misconduct which
16 comes to light after a discharge has taken place cannot be used to
17 justify the discharge, and that the Company's reason at the time of
18 discharge did not constitute just cause. However, M ' case
19 is not the usual situation where the Company attempts to justify
20 the discharge for misconduct which occurred after the discharge
21 has taken place. In ' case, it is not that his misconduct
22 took place after discharge but rather that the Company only became
23 aware of misconduct serious enough to justify discharge after it
24 discharged him, but which misconduct occurred before his discharge.
25 Thus, while the discharge is not justified as of the time that it
26 was imposed, the later-discovered evidence establishes M
27 as an unacceptable employee.

28 Thus, though the discharge of the grievant is not sustained,
29 by way of remedy the conclusion follows that the grievant is not
30 entitled to reinstatement because the record clearly establishes
31 that had the Company been aware of his total record, discharge
32 would have been amply justified. Thus, the grievant is entitled to

1 back pay from the date of discharge to the time the Company first
2 learned of the lumber-stealing incident. Jurisdiction is retained
3 by the Arbitrator in the event that the parties cannot agree on the
4 exact amount of back pay.

5 AWARD

6 (1) S : His suspension was im-
7 proper and he is entitled to back pay
8 for that period less whatever he re-
9 ceived from outside earnings and/or
10 unemployment compensation during that
11 period.

12 (2) B : His suspension was im-
13 proper and he is entitled to back pay
14 for that period less whatever he re-
15 ceived from outside earnings and/or
16 unemployment compensation during that
17 period.

18 (3) M : The discharge of the
19 grievant is not sustained. However, by
20 way of remedy, the grievant is not en-
21 titled to reinstatement but is entitled
22 to back pay from the date of discharge
23 to the time that the Company first
24 learned of the lumber-stealing incident.
25 Jurisdiction is retained by the Arbi-
26 trator in the event that the parties
27 cannot agree on the exact amount of
28 back pay.

29 Dated: 5-24-74 
30 ADOLPH M. KOVEN, Chairman,
31 Board of Arbitration

32 Concur re: Simonds:

33 /s/ Lawrence N. Foss
34 LAWRENCE N. FOSS, Union Board Member Dated: 4/30/74

35 /s/ Albert E. Sandoval
36 ALBERT E. SANDOVAL, Union Board
37 Member Dated: 5-3-74

38 DAVID BERGMAN, Company Board Member Dated: _____

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ARTHUR M. KEZER, Company Board Member

Dated: _____

Dissent re: Simonds:

LAWRENCE N. FOSS, Union Board Member

Dated: _____

ALBERT E. SANDOVAL, Union Board Member

Dated: _____

/s/ David Bergman
DAVID BERGMAN, Company Board Member

Dated: 5/6/74

/s/ Arthur M. Kezer
ARTHUR M. KEZER, Company Board Member

Dated: 5/7/74

Concur re: Baxter:

/s/ Lawrence N. Foss
LAWRENCE N. FOSS, Union Board Member

Dated: 4/30/74

/s/ Albert E. Sandoval
ALBERT E. SANDOVAL, Union Board member

Dated: 5/2/74

DAVID BERGMAN, Company Board Member

Dated: _____

ARTHUR M. KEZER, Company Board Member

Dated: _____

Dissent re: Baxter:

LAWRENCE N. FOSS, Union Board Member

Dated: _____

ALBERT E. SANDOVAL, Union Board member

Dated: _____

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/s/ David Bergman
DAVID BERGMAN, Company Board Member

Dated: 5/6/74

/s/ Arthur M. Kezer
ARTHUR M. KEZER, Company Board Member

Dated: 5/7/74

COMPANY CONCURS IN PART-Concurs as to the award
not to reinstate.

Concur re: Medeiros: UNION CONCURS IN PART-Concurs with award of back
pay for time period in-
volved.

/s/ Lawrence N. Foss
LAWRENCE N. FOSS, Union Board Member

Dated: 4/30/74

/s/ Albert E. Sandoval
ALBERT E. SANDOVAL, Union Board
Member

Dated: 5/3/74

/s/ David Bergman
DAVID BERGMAN, Company Board Member

Dated: 5/6/74

/s/ Arthur M. Kezer
ARTHUR M. KEZER, Company Board Member

Dated: 5/7/74

COMPANY DISSENTS IN PART- Dissents as to the
award of back pay.

Dissent re: Medeiros: UNION DISSENTS IN PART-Dissent as to failure
to reinstate with full
back pay.

/s/ LAWRENCE N. FOSS
LAWRENCE N. FOSS, Union Board Member

Dated: 4/30/74

/s/ ALBERT E. SANDOVAL
ALBERT E. SANDOVAL, Union Board Member

Dated: 5/3/74

/s/ DAVID BERGMAN
DAVID BERGMAN, Company Board Member

Dated: 5/6/74

/s/ ARTHUR M. KEZER
ARTHUR M. KEZER, Company Board Member

Dated: 5/7/74